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UNCLAS SECTION 01 OF 03 MEXICO 004222

SIPDIS

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STATE FOR WHA/MEX, EB/TPP/IPE, INL/C/CP  
DEPT PASS TO DOJ FOR CCIPS AND OPDAT  
USTR FOR JMELLE/VESPINEL  
DOC FOR 4320/ITA/MAC/ONAFITA/ARUDMAN/GWORD  
USPTO FOR BHARDMAN

E.O. 12958: N/A  
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [KPAO](#) [WTRO](#) [MX](#)  
SUBJECT: EMBASSY MEXICO CITY 2006-2007 IPR PROTECTION  
PLANS/RECOMMENDATIONS

REF: A. MEXICO 2951

[1](#)B. STATE 67311  
[1](#)C. 05 MEXICO 893  
[1](#)D. 05 MEXICO 4795

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SUMMARY  
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[1](#)1. (U) Despite the increases in raids and seizures carried out over the last year by Mexican Customs (Aduanas) and the Specialized IPR Unit within the Attorney General's office (PGR), markets selling counterfeit goods are ubiquitous and abuse of intellectual property rights (IPR) remains rampant. Combined losses to Mexican and international companies - especially in the film, music, software, textile and pharmaceutical industries - are in the hundreds of millions of dollars annually. This cable lays out action recommendations and key challenges for the next year. End Summary.

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GENERAL SETTING  
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[1](#)2. (U) Although IPR laws on the books are largely in compliance with NAFTA and WTO TRIPS, they are poorly understood and weakly applied by overburdened Mexican judges who often reject IPR cases. As a result, prosecutors rarely put forward the effort to build cases to take to trial, focusing instead on meeting the extensive legal requirements necessary to carry out raids (Ref A). In the 2006 Special 301 report, in which Mexico remained on the Watch List, the USG recognized Mexico's increased enforcement efforts against IPR violators, but pointed out the need for significant improvement in follow-on prosecutions and deterrent penalties (Ref B).

[1](#)3. (U) Mexico's IPR challenges are deep rooted and defy easy solutions. The United States cannot create the political will within the Mexican government to fully carry out its IPR laws. Nor can we change the underlying socio-economic situation in which the informal economy and piracy thrive. However, we can help build capacity of the main IPR protecting bodies within the government, train non-governmental organizations in effective public diplomacy and lobbying strategies, educate the public and our government interlocutors of the high societal costs

associated with piracy, and continue to raise our concern for IPR protection with the GOM.

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OVERALL PLANS  
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14. (SBU) As with our 2005 Action Plan (Ref C), Post plans to work closely with the Department of Justice's Office of Computer Crime and Intellectual Property Section (CCIPS) and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT). OPDAT administers an INL-funded budget for Mexican IPR initiatives that Post used in 2005 and early 2006 to carry out last year's IPR Action Plan. Our plans for the remainder of 2006 and the first half of 2007 rely on using these existing OPDAT funds, which are approximately \$70,000.

15. (U) On July 2, Mexico held national elections and Post expects that many of our most important contacts at Aduanas, PGR, and the Intellectual Property Institute (IMPI) will resign in the coming months. The personnel changes are likely to temporarily disrupt, if not halt, IPR enforcement during the interregnum and for several months after the new administration takes over in December. Consequently, Post expects delays to our outreach and training efforts.

16. (U) Nevertheless, in the next few months we should be able to carry out a few training programs already in progress. Once the new administration is in place, our first step will be to establish trust and strong working relationships with the new personnel. The extensive private sector contacts we developed over the past year and our involvement in the Inter-Institutional Committee (Ref D) should help pave the way.

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TRAINING AND OUTREACH - SECOND HALF 2006  
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17. (U) In March 2006, Econoff, a CCIPS attorney and two officers from the Department of Homeland Security's Office of Immigration and Customs Enforcement (ICE) conducted investigation and prosecutorial training for officials from PGR, Aduanas, and Public Security in Mexico City and Guadalajara. Felipe Munoz, the current head of PGR's IPR Unit, has requested a second round of this training for district attorneys from each state. Munoz said the training would need to take place in August or September before he and his boss, Assistant Attorney General Carlos Aguilar, leave their posts. Econ FSN is currently working with Munoz and CCIPS to set the actual training dates. (Note: although Munoz is willing to carry out the training, the final decision depends not on his boss Aguilar, but on another Assistant Attorney General.)

18. (U) Over the past year, Post has sent several personnel from IMPI, Aduanas, PGR, INDAUTOR, and the Mexican judiciary for training at the U.S. Patent and Trademark Office's (USPTO) Global Intellectual Property Academy (GIPA) and the Enforcement Academy. USPTO training programs have been very well received by our contacts and help build professional capacity within these important IPR agencies. GIPA trainings have recently been broken out by individual IPR topic (e.g. patents, trademarks, etc.) and therefore can be better targeted to our contacts' needs. Post plans to continue actively nominating candidates for USPTO training; funding those we can while also requesting GOM and USPTO funding as appropriate.

19. (SBU) As referenced above, the Mexican judiciary is a weak link in the Mexican IPR regime. However, Post's ability to engage judges in training has been difficult due to professional sensitivities- i.e. it can be perceived as a

criticism of their knowledge and abilities. Other private sector organizations also recognize this challenge and are working to address it. Alejandro Bustos, Legal Director at media conglomerate Televisa, is developing an IPR symposium for judges this summer and early fall. Bustos requested our support and has asked us to invite two or three U.S. judges to participate in the roundtable. Post identified a Spanish-speaking judge who will be participating in the forum scheduled for August 22. The forum will focus on Mexico's IP obligations under international provisions and treaties.

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FIRST HALF OF 2007  
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¶10. (U) In April, several leading anti-piracy organizations, including the Motion Picture Association, Alianza Contra Pirateria, National Apparel Chamber, and the Business Software Alliance, announced they were forming a new anti-piracy NGO. Roberto Castaneda, President of Alianza Contra Pirateria and Nike's internal legal counsel, said they will focus their efforts on government lobbying and public outreach. The organization has requested Post's assistance to develop a training program on effective lobbying and a public service announcements campaign. Target dates for both efforts are 2007.

¶11. (U) In September 2005, Post, DOJ and the Customs and Border Protection (CBP) conducted operational training at the port city of Manzanillo for Aduanas inspectors from throughout Mexico. The weeklong training program included basic classroom IPR education - what is IPR, why it is important to protect, what are the basic laws, etc. - as well as hands-on targeting and inspection work at the port. An important result was the seizure of 28,000 counterfeit Mont Blanc pens with a street value of over \$1 million. The training was extremely well received by Aduanas. Several participants commented that it was the first training they had received on any topic. At the conclusion of the event we held a brainstorming session to develop ideas for future capacity building events. The most popular idea was to develop an IPR "tool box," to include instructional and educational material, which would be sent to every major customs location and used as a reference tool for expanding IPR knowledge. Post also recommends sending few new Aduanas

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officials to a U.S. Strategic Trade Center, ideally during an IPR Trade Fair, to enable them to see CBP and ICE best practices at a U.S. port.

¶12. (U) The U.S. International Trade Commission and the Jalisco state government are interested in organizing a Latin America-wide Anti-Piracy Congress in Guadalajara to bring together industry, government, NGOs and other experts to discuss the growing piracy problem in Latin America and to identify best practices on protecting IPR. The idea is in its early stages, but it could be an interesting way to highlight the impact that piracy has on Latin America's own indigenous industries and artists, as opposed to large U.S. multinationals. Post will continue to discuss the idea with ITC and the Jalisco state government.

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FURTHER DOWN THE ROAD  
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¶13. (SBU) PGR and Aduanas are fundamental to Mexico's enforcement of its IPR laws. Unfortunately, the anti-piracy divisions within these agencies lack the capacity and funding to fully carry out their missions. PGR's Specialized IPR unit, as discussed in Ref A, lack computers and printers and have virtually no investigation devices. Aduanas, which controls the entry of goods to Mexico, has no database of registered trademarks nor digital examples of authentic products against which they can verify suspicious shipments.

And, when they believe they have identified and detained counterfeit product, they have no listing of rights holders to contact in order to take the next legal step necessary according to Mexican law to seize the product.

¶14. (SBU) Addressing this lack of capacity within two of Mexico's principal IPR protection agencies could significantly reduce the quantity of fake products that enter the country, as well as improve PGR's ability to build cases and carry out raids. Together it could mean less fake products offered for sale in the numerous popular street markets. Post will need to further investigate the viability and cost of the idea. Ultimately it will only be possible with strong commitment and support from the new heads of these agencies under the new administration. If this support is forthcoming Post could submit a proposal to INL in the 2007 budget request.

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CONCLUSION  
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¶15. (SBU) It is true that the GOM has made improvements in IPR protection in the last few years. At the same time, limited funding and personnel at the key agencies, laws that restrict agencies' ability to carry out enforcement actions, the paucity of convictions, lack of fines for IPR violators, and the existence of thousands of street vendors and markets selling pirated products with near impunity to a willing public, all point to the urgent need for further improvements. As in the past, IPR protection in Mexico will improve only when the GOM makes enforcement and prosecution a higher priority.

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